

## Letter re UBS Defendants' Request for Extension

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### VIA ELECTRONIC MAIL

The Honorable Denise L. Cote  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 1610  
New York, NY 10007-1312

Re: FHFA Actions, No. 11 Civ. 5201 (S.D.N.Y.) (DLC), et al.

Dear Judge Cote:

We write on behalf of the Plaintiff Federal Housing Finance Agency ("FHFA"), as a follow-up to FHFA's January 29, 2013 letter regarding UBS Defendants' request for a four-month extension of the Tranche I trial date and the scheduling order established by this Court. Below, we provide an update to the status of scheduling Rule 30(b)(6) depositions of FHFA and address UBS Defendants' erroneous beliefs regarding the completeness of the production of Freddie Mac e-mails.

**The Parties Are Working Toward the Scheduling of Rule 30(b)(6) Depositions.** The parties met-and-conferred yesterday, February 5, regarding FHFA's objections to Defendants' noticed 30(b)(6) topics. FHFA will provide Rule 30(b)(6) designees beginning the week of February 18. In addition, Defendants confirmed that they are no longer of the position that objections to all noticed topics should be adjudicated before the depositions begin. There is thus no reason FHFA's objections should necessitate rescheduling of any dates set forth in the scheduling order.

**FHFA Has Collected All Reasonably Accessible Freddie Mac Pre-2008 E-mails.** FHFA has produced roughly 28,000 pre-2008 Freddie Mac e-mails (excluding attachments) and another 10,000 Bloomberg e-mails. In order to complete its production, FHFA collected over 1.9 million pre-2008 Freddie Mac e-mails from e-mail server backup tapes, shared network drives, private

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network drives and personal computer hard drives. Contrary to UBS Defendants' argument, the average number of documents produced per custodian has no bearing on the adequacy of FHFA's production. All custodians were not employed during the entire relevant period; indeed, some left Freddie Mac as early as 2005 (*e.g.*, Andrew Gilmer (9/2/05); Steve Tips (12/9/05)). It is unsurprising that FHFA produced relatively few e-mails for such custodians. The UBS Defendants' argument to the contrary is odd given that they have produced less than 400 pre-2008 e-mails for 29 of their custodians (and less than 100 e-mails for 17 custodians). Nevertheless, FHFA is fully prepared to proceed with depositions. Any future production of pre-2008 e-mails, including those produced as FHFA finishes its review of documents identified as privileged, should not affect UBS Defendants' ability to prepare for or take Rule 30(b)(6) depositions, particularly given the Court's direction that such depositions should be limited to Freddie Mac's policies and procedures. (*See* 11/15/12 Hrg. Tr. at 22:18-25.)

FHFA respectfully requests that the Court deny UBS Defendants' application to continue deadlines set forth in the Scheduling Order.

Respectfully submitted,

/s/ Sascha N. Rand

Sascha N. Rand

cc: All counsel of record (via e-mail)